vehicular traffic passing through the servient tenement from Grange Road to the 120 flats on Lot 561 when they are completed and occupied must be such as to amount to a substantial interference with the appellant's right to use the servient tenement for ingress to and egress from the dominant tenement. It is submitted, having regard to the respondent's evidence that the intention is for the occupiers of the 120 flats to use the metalled road which would run through the servient tenement as a one way road for ingress to the flats from Grange Road, that such use would create a danger to the appellant in his enjoyment of his right to use the servient tenement as a means of egress from his properties to Grange Road.

As we have said, the question turns on the facts and circumstances of the particular case. The way in question is about 280 feet long and the metalled portion will be 18 feet wide. It will be used as a one way road by the occupiers, and their invitees, of 120 flats to their flats from Grange Road but they will have other means of access to these flats. It is reasonable to assume that all the occupiers of these flats own cars. It is also reasonable to infer that not more than half of the occupiers would be passing along this metalled road when they return to their flats from work, shops, markets, etc. nor would they be passing along it at the same time. The appellant presently rarely uses it and is unlikely to do so in the near future. The trial judge was of the opinion on the facts before him that it would be highly improbable that vehicular traffic using it would be so heavy as to substantially interfere with the appellant's right of way and his opinion is entitled to great weight. For ourselves, we have arrived at a similar view. As regards the element of danger, we are of the opinion that the volume of vehicular traffic that is likely to use the servient tenement in the near future would not be such as to constitute a danger to the appellant in his enjoyment of the right of way.

Accordingly, in our judgment no case has been made out for a *quia timet* injunction at the present time. This is also not a case for us to make, as urged by the appellant that we should, an order declaring that the respondent should not use the servient tenement in such a manner as to cause a substantial interference with the use of the servient tenement by the appellant or to cause a nuisance to the appellant, with liberty to the appellant to apply for an injunction.

For all these reasons we would dismiss the appeal with costs. It does not preclude the appellant in the future, if and when the facts and circumstances have changed, from seeking whatever remedy it may be advised to seek.

Kulasekaram and **Choor Singh JJ.** concurred.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Yap & Yap.*

U.C.S. PTE. LTD. v. COMPTROLLER OF INCOME TAX

[C.A. (Wee Chong Jin C.J., Winslow and Tan Ah Tah JJ.) September 21, 1976]

[Singapore — Civil Appeal No. 11 of 1975]

Revenue Law — Income Tax — Economic expansion incentives — How should exempt income in an export enterprise be computed — Whether capital allowances should be deducted in arriving at such exempt profit — Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 135), ss. 30 and 32(1).

This was an appeal by the appellant company against the decision of the High Court affirming the order of the Income Tax Board of Review held in favour of the Comptroller of Income Tax.

In this case the appellant company which is engaged in the business of manufacturing dry cell batteries, is an export enterprise for purposes of the Economic Expansion Incentives (Relief from Income Tax) Act. As an approved export enterprise it would be exempt from income tax in respect of a portion of its export profit. For each year of assessment the law requires two computations to be made, one under the Incentives Act to determine the exempt profit and the other under the Income Tax Act to determine the taxable income. The dispute in issue concerns the method of computation of the amount of export profit that should qualify for exemption from tax, and in this regard the issue is whether section 32(1) of the Incentives Act makes it mandatory for capital allowances to be deducted in arriving at such exempt profit.

Held: the Comptroller's contention that capital allowances should be deducted in arriving at the exempt profit is correct and is in accordance with the provisions of section 32(1).

COURT OF APPEAL.

Michael Nolan Q.C. (*Lim Chor Pee* with him) for the appellant.

James S.C. Chia (*Lucy Hangchi* (State Counsel) with him) for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court*): This appeal by the appellant/taxpayer from the judgment of the High Court dismissing his appeal against the Order of the Income Tax Board of Review in favour of the respondent, Comptroller of Income Tax, raises an issue of some complexity involving the true interpretation of subsection (1) of section 32 of the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 135), (hereinafter referred to as "the Incentives Act"), which is identical with subsection (1) of section 30 of the Incentives Act of 1967 (No. 36 of 1967) which, as amended in 1970, became the Incentives Act aforesaid.

Although four years of assessment, from 1968 to 1971 inclusive, were under separate appeals before the Board, it was agreed between the parties that a decision on the question of construction involved in respect of the year of assessment, 1968, would be equally binding in respect of the three other appeals. It should also be borne in mind that, although in this judgment, the numbering of the sections used both by the court below as well as the Board is followed in order to avoid confusion, to wit, the numbering contained in Cap. 135, the sections with which we are really concerned are the same sections with different

* At the time of the judgment Tan Ah Tah J. had passed away, [1976] 2 M.L.J. lxxviii.

numbers, as they stood unamended, in the 1967 Act which applies to all the four years aforesaid.

The facts which are not in dispute are briefly as follows: —

(1) The appellant company was, during the relevant period, engaged mainly in the business of manufacturing dry cell batteries in respect of which it was the possessor of an export enterprise certificate issued by the Minister under section 23 of the Incentives Act on its approval as an export enterprise;

(2) As such, it became entitled to tax relief on a portion of its export profit during the relevant period, there being no dispute about its satisfying the conditions for such relief as prescribed by section 31;

(3) The method of computation of the total export profit of the appellant company is prescribed by subsection (2) of section 30 of the Incentives Act which the parties are agreed can be reduced to a formula:

$$\text{export sales (f.o.b.)} \times \frac{\text{net income}}{\text{total sales}};$$

It should be noted that this formula only enables what such total export profit shall be deemed to be and that the actual total export profit may not necessarily be exactly the same as the total thereof arrived at by the application of the formula prescribed by subsection (2).

(4) It is agreed that the net income of the appellant company has been correctly determined under subsection (1) of section 30 without making any deductions which may fall to be made in respect of allowances for capital expenditure under sections 16 to 22 inclusive of the Income Tax Act (Cap. 141) (hereinafter referred to as "the Tax Act"); and quantum of that net income, being the total trading profit of the appellant company, has been agreed at $3,075,376.00. This agreed figure has not been determined by any "deeming" formula and is the actual agreed income of the appellant company.

(5) For the purposes of computing the total export profit, therefore, no allowances arising under sections 16 to 22 inclusive of the Tax Act have been taken into consideration in order to ascertain the net income of the appellant company as a whole in respect of its total trading profit as opposed to its export profit which only forms part thereof. Once the total export profit as aforesaid has been ascertained, subsection (3) of section 30 provides that a fixed sum, to be determined as prescribed therein, shall be deducted in order to determine the quantum of the appellant company's export profit arising from the export of export products or produce which will qualify for the relief provided by section 32 of the Incentives Act. It is agreed that the quantum of this "qualifying export profit" is $848,930. This again is an agreed figure based on what the quantum of the qualifying export profit shall be under subsection (3) as a result of deducting from the deemed total export profit aforesaid the fixed sum aforesaid determined by another formula based on the preceding annual or monthly export profit prescribed by subsection (5) or as determined by the Minister. This figure therefore is not an actual figure for the relevant year under consideration.

The dispute that has arisen on these agreed facts concerns the interpretation of section 32(1) of the Incentives Act which reads as follows: —

"32.-(1) Where any amount of export profit qualifies under sections 30 and 31 of this Act for the relief provided by this section, any deduction which may fall to be made under any of the provisions of sections 16, 17, 18, 19, 19A, 20, 21 and 22 of the Income Tax Act shall be made for any year of assessment in respect of which such increased export profit would have formed part of the statutory income of the export enterprise save for the provisions of this Part of this Act."

Section 32(2) and (3) provide as follows: —

"32.-(2) For each year of assessment the Comptroller shall issue to the export enterprise a statement showing the balance of the export profit for that year of assessment and the provisions of Parts XI and XII of the Income Tax Act (relating to objections and appeals) and of any rules made thereunder apply, *mutatis mutandis*, as if such a statement were a notice of assessment given under those provisions.

(3) Subject to subsection (6) of section 33 of this Act, where any statement issued under subsection (2) of this section has become final and conclusive an amount equal to ninety per cent of the balance of such export profit shall not form part of the statutory income of the export enterprise for that year of assessment but shall be exempt from tax."

In our opinion all the provisions of Part IV of the Incentives Act have to be considered in order to arrive at the true interpretation of section 32(1). It is clear from section 23 that an approved "export enterprise" may be engaged in manufacturing either wholly or partly for export. It is clear from section 30 that only the export profit of an approved "export enterprise" *i.e.* profit derived from its export sale of its export products, is to be considered in calculating the amount of the export profit which qualifies for the relief provided by section 32 *i.e.* the qualifying export profit.

The Comptroller contends that section 32(1) makes it mandatory for him to deduct capital allowances, whether claimed or otherwise, from the qualifying export profit but that, in order to be fair, only part thereof equivalent to the proportion which that qualifying profit bears to the total trading profit should be deducted. Both the Board and the Judge, on appeal, agreed with this contention.

The appellant taxpayer argues that this contention is wrong for the following reasons: —

(1) The learned judge erred in finding that capital allowances must be deducted from such qualifying export profit as submitted by the Comptroller;

(2) The Comptroller was accordingly not entitled to make a proportionate deduction of capital allowances from such profit and, thereby to reduce the appellant's exempt export profit as set out in his computation.

Counsel for the appellant company, Mr. Nolan, points out that nowhere does section 32 state that a proportionate deduction of capital allowances must

be made from the export profit of an export enterprise. He contends that if it had been intended that such deductions should be made from the qualifying export profit, the addition of a few words such as "from such qualifying export profit on a proportionate basis" would have placed the matter beyond doubt.

Further, he contends that since section 32(3) provides that "ninety per cent of the balance of such export profit shall not form part of the statutory income of the export enterprise for that year of assessment but shall be exempt from tax", one would have expected to find some more positive if not express provision such as that contained in section 328 of the United Kingdom Income & Corporation Taxes Act of 1970 which requires certain dividends to be included in the computation of profit, notwithstanding the fact that they are exempted from tax by other provisions of that Act, if the Comptroller's contention is correct. These or similar words do not exist in section 32 or, for that matter, anywhere in the Incentives Act.

Mr. Nolan further contends that the object of section 32(1) was to ensure that the right of a taxpayer to make deductions under sections 16 to 22 of the Income Tax Act still remained notwithstanding the provisions of section 30(1).

Section 30 reads as follows: —

"30.–(1) The income of an export enterprise in respect of its trade or business to which its export enterprise certificate relates shall be ascertained (after making any necessary adjustments in consequence of a direction under section 9 of this Act, as applied to this Part by section 26 of this Act) for any accounting period during its tax relief period in accordance with the provisions of the Income Tax Act, without making any deductions which may fall to be made under any of the provisions contained in sections 16, 17, 18, 19, 19A, 20, 21 and 22 of that Act.

(2) The total export profits of an export enterprise shall be deemed to be that part of the income so ascertained which bears the same proportion to that income as the total value of the export sales (f.o.b.) of its export product or export produce whether made directly or indirectly by sale to an independent exporter (in this Part referred to as 'the export sales') bears to the total value of the sums receivable in respect of —

(a) its domestic sales of manufactured products or produce at ex-factory prices;

(b) its export sales (f.o.b.) of its export product and export produce;

(c) its exports sales (f.o.b.) of other products; and

(d) all other sales and provisions of service,
(in this Part referred to as 'the total sales').

(3) Where a company exports any products or produce to which its export enterprise certificate relates, the amount of its export profit arising from the export of such products or produce which will qualify for the relief provided by section 32 of this Act is the excess of that profit over a fixed sum to be determined in the following manner:—

(a) in the case of a company which has previously exported such products or produce, the average annual export profit of the company shall be ascertained in the manner provided by subsection (4) of this section; and

(b) in the case of a company which has not prior to its application under section 23 of this Act exported such products or produce for three years immediately preceding its application, the fixed sum shall be such an amount as the Minister may determine having regard to the total sales of the company and the percentage of the total sales of other major export enterprises exporting like articles:

Provided that where such a company is a pioneer enterprise this subsection applies notwithstanding that the company was deemed to commence a new trade or business at the end of its tax relief period as a pioneer enterprise.

(4) For the purposes of this section, 'average annual export profit' means a sum equal to one-third of the total export profits of the company from the export of such products or produce ascertained in the manner provided by subsection (2) of this section during the three years immediately preceding the date of its application under section 23 of this Act:

Provided that where the company concerned has adopted an accounting period ending on a date other than 31st December, the Comptroller may make such adjustment on a time basis as appears to him to be reasonable in ascertaining the total export profits of that period.

We are unable to accept these contentions. In our opinion the sole and clear purpose of section 30 is to compute the total export profit of an export enterprise and the amount of such profit which will qualify for the relief provided by section 32. In our judgment section 30(1) was never intended, nor could it be construed, to take away the right to deduct capital allowances under the Income Tax Act. Accordingly, the object of section 32(1) cannot be to ensure that the right to deduct capital allowances under the Income Tax Act still remained and to preserve that right.

The fact that there is in section 32 no express provision, such as can be found in the 1970 United Kingdom Act, requiring a proportionate deduction of capital allowances to be made from the export profit seems to us irrelevant to the issue to be decided. If the words suggested by Mr. Nolan had been included in the section neither the Board nor the High Court nor this court would have been asked to adjudicate as the matter would have been beyond doubt.

In our judgment the Comptroller's contention that section 32(1) makes it mandatory for him to deduct capital allowances from the qualifying export profit is correct and his deduction from the qualifying export profit by an amount of the capital allowances which would have been attributed to such profit under the provisions of the Income Tax Act had it not been exempt under Part IV of the Incentives Act is in accordance with the provisions of section 32(1).

Accordingly, the decisions of the Board and the High Court confirming the assessments raised by the Comptroller of Income Tax and dismissing the appeals of the appellant-taxpayer are correct and the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Chor Pee & Hin Hiong.*